

**REMARKS**

Entry of this Amendment and reconsideration are respectfully requested in view of the remarks made herein.

Claims 1-27 stand pending. Claims 1-6 and 23-27 stand rejected. Claims 7-22 are allowed.

Claims 1-6 and 23-27 stand rejected under 35 USC 102(e) as being anticipated by Welling (USP no. 6,580,704).

Applicant respectfully disagrees with, and explicitly traverses, the reason for rejecting the claims.

Welling teaches a direct mode communication method between two mobile terminals, wherein RSS measurements are performed between the mobile stations and the associated access point (AP) decides whether a feasible DM wireless radio communication can be setup based on the measurement. However, Welling fails to disclose that the AP selects a channel based on a received signal strength (RSSI) and a packet error rate (PER), as is recited in the claims. In fact, Welling is totally silent on determining a packet error rate.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference. Welling cannot be said to anticipate the present invention as recited in claim 1, because Welling fails to disclose each and every element recited. As shown, Welling fails to disclose selecting a channel based on an RSSI and PER.

Accordingly, applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to independent claim 23, this claim was rejected citing the same reference used in rejecting claim 1. Thus, the applicant's remarks made in response to the rejection of claim 1 are also applicable in response to the rejection of claim 23. In view of the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, herein, in response to the rejection of claim 23, applicant submits that the reason for

rejecting this claim has been overcome and the rejection can no longer be sustained. Applicant, accordingly, respectfully requests withdrawal of the rejection and allowance of the claim 23.

Claims 2-6 and 24-27 are dependent from the independent claims 1 and 23 discussed above and are therefore believed patentable for the same reasons. As each dependent claim is also deemed to define an additional aspect of the invention, the individual consideration of the patentability of each on its own merits is respectfully requested

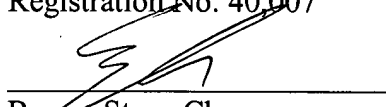
Applicant thanks the examiner for the indication of allowable subject matter in claims 7-22. However, in view of the remarks made with regard to independent claims 1 and 23 and associated dependent claims, applicant believes that all the claims are allowable.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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